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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 875

SHENANDOAH CORPORATION, *Petitioner*

vs.

E. FRANKLIN JACKSON, ETC., *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURTH OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner (Defendant, then Appellant below) prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above cause.

OPINIONS BELOW

The opinion of said court is reported in 298 F2d 324 and is included in the appendix hereof. The opinion of the

United States District Court for the District of Columbia is included in the appendix to the original record filed herewith.

JURISDICTION

The opinion of the United States Court of Appeals for the District of Columbia was dated Jan. 11, 1962. Rehearing was denied by order entered Jan. 31, 1962.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254.

QUESTIONS PRESENTED

1. Seeming inconsistency between Acts of Congress regulating real estate tax sales and conservatorships in the District of Columbia.
2. Redemption from a tax sale by tender of a worthless check.
3. Taking property from a District grantee and vesting it in a fiduciary who has violated his trust.
4. Entry of judgment against a non-party.
5. Finality of a judgment which leaves open the amounts to be paid.

STATUTES INVOLVED

The following sections of D.C. Code (1950 Ed.): 21-501, 21-503, 47-1001, 47-1002, 47-1003 and 47-1005, all set forth in the appendix hereto.

STATEMENT OF THE CASE

The action concerns title to a parcel of real property in the District of Columbia. Its owner, Mary Mason Jones, died on Jan. 29, 1955. Her will left the residence to her husband, William R. Jones. This property was not specified in the will.

Owing to Jones' physical infirmities (but not unsoundness of mind) E. Franklin Jackson was appointed his conservator by the District Court for the District of Columbia on

Aug. 22, 1955. He posted bond and began collecting rents from this property but paid no real estate taxes.

On March 12, 1959, the District Commissioners issued to Petitioner their deed to this property in exchange for a certificate purchased by Petitioner at the District's tax sale two years earlier.

The conservator testified that he thereafter undertook to redeem the property by tendering a check for accrued taxes and interest, but the check was worthless. No other payment was attempted.

The District Court's order, affirmed on appeal, not only nullified the District Commissioners' deed to Petitioner but also required Petitioner to account to the conservator for rents it had collected and directed the District (not a party) to reimburse to Petitioner the taxes it had paid on the property.

Although not specified in the Conservator's Complaint, the jurisdiction of the District Court was based upon Sect. 11-305, 306, D.C. Code (1950 Ed.).

ARGUMENT

1. Statutory Good Title Confiscated, Without Cause.

The District of Columbia tax sale procedure was established by Congress in 1898 and has remained substantially the same.

In 1950, Congress adopted a conservatorship procedure to cover a person unable "by reason of advanced age, mental weakness (not amounting to unsoundness of mind) or physical incapacity properly to care for his property . . ."

No reference was made therein to the tax-sale statute (Sect. 47-1003) which grants "minors and other persons under legal disability . . . one year . . . after the removal of such legal disability to redeem the property so sold . . . on the payment of the amount of the purchase money so paid therefor. . . . together with all taxes and assessments

that have been paid thereon by the purchaser . . . with 8% per annum interest . . ."

Sect. 47-1003 also grants "the owner or owners thereof, or their legal representatives" two years after the sale within which to redeem a property sold at a tax sale.

Did Congress intend, in creating conservatorship, to consider the ward a person "under legal disability" or a person having a "legal representative?" The statutory language affords no clue, except the emphasis that a person of unsound mind may not have a conservator.

To the extent that it affects title to real property, as determined by the tax-sale statute, the 1950 conservatorship statute should be strictly construed.

Sect. 47-1003 states that "a deed . . . given by the Commissioners of the District . . . to the purchaser at such tax sale . . . shall be admitted and held to be prima facie evidence of a good and perfect title in fee simple . . ."

While the Supreme Court apparently has not passed upon this provision of the District of Columbia Code, a similar provision was included in Civil War acts passed by Congress. A tax title issued in Memphis, Tenn., was sustained in *Keely* v. *Sanders*, 99 U.S. 441, 444:

> . . . "After having declared that the commissioners' certificate should be *prima facie* evidence both of the regularity and validity of the sale, as well as of the title of the purchase, Congress went further, and enacted that it should be affected as evidence of such regularity, validity and title only by establishing one or more of three facts: non-liability of the property for taxes, or that the taxes had been paid before the sale, or that the property had been redeemed. Of what possible use was this proviso, unless it was intended to make the certificate conclusive of the validity of the sale and the title of the purchase, unless it should be impeached by establishing one of the three facts mentioned. . . . While it may be admitted that a statutory right of redemption is to be favorably regarded, it is nevertheless true that it is a statutory right exclusively, and can only be claimed in the cases and

> under the circumstances prescribed. Courts cannot extend the time, or make any exception not made in the statute. . . .

Even the trial court recognized that, "Such a deed (as Petitioner's) given in accordance with the statute is prima facie evidence of good title and extinguishes all interest arising out of the title record. *W. C. & A. N. Miller Development Co.* v. *Emig Properties Corp.*, 134 F2d 36.

"However," the trial court stated, "the deed given to the defendant here was given during a period in which the redemptive right of William R. Jones still existed under Sect. 47-1003, D.C. Code. The deed, then, is void and defendant has only such interest as it acquired through the tax sale. This interest is subject to William R. Jones' right to redeem which still exists as to the tax sale."

Affirmance by the Court of Appeals, although without such specific language, means that good title is good title, except . . . Such a position is damaging not only to the grantee but also to the community, as stated by the District Court for the District of Columbia in an earlier decision. *Deming* v. *Turner*, 63 F. Supp. 220:

> It is in the interest of the community that stability and response of titles to real property should be maintained and that they should not be upset on mere technicalities. This proposition is applicable to tax titles. The grantee in a tax deed is no mere purchaser of a law suit. His title is worthy of as much respect as a title derived from a grant of any other type.

2. "Tender" of Worthless Check Treated as Payment.

If the conservator had a right to redeem this property, he could do so only as Sect. 48-1003 provides: ". . . on *payment* of the amount of purchase money so paid therefor, with 8% per annum interest . . ."

Here the conservator paid nothing. The record does not even show the amount due.

What the conservator did, according to his own testimony,

was to sign a check payable to Petitioner. Such a check, he explained, required the counter-signature of the attorney for the estate. There was no testimony that the check was co-signed, delivered or tendered. The check was not in evidence.

But the check, even if issued, was worthless because, as the conservator admitted, it was almost twice the amount then in the account upon which it was drawn.

The law on this subject has been well stated by the Supreme Court of Texas in *Cornelius* v. *Cook*, 213 SW2d 767:

> The law is well settled that for a check to have the effect of payment, the drawer thereof must have sufficient funds to his credit in the bank to pay the same . . . if a check is tendered in payment of a debt, that before same will constitute a legal tender, it must be shown that the party drawing the check had sufficient funds in the bank with which to pay it . . .

3. Fiduciary's Misconduct Sanctioned.

A conservator is required "before entering upon the discharge of his duties (to) execute an undertaking . . . conditioned on the faithful performance of his duties . . ." Sect. 21-503.

The ward thus is given protection. But others apparently may be victimized with impunity, for the opinions below make no mention of the fiduciary's misconduct, which gave rise to the whole matter.

He started collecting rents from this property in 1955. He paid no taxes thereon in the five years which had elapsed up to the time of trial.

Petitioner acted entirely and solely as the law provides, in bidding at the tax sale, holding its certificate for the two-year normal redemption period, then exchanging it for a deed which was "prima facie evidence of a good and perfect title in fee simple . . ." (Sect. 47-1003).

No grounds have been shown in the opinions below for extending equitable relief, even if permissible, to one with

such unclean hands against one who has acted according to law.

In *Nelson v. City of New York*, 352 U.S. 103, tax deeds resulted from the failure of trustee-owners to pay water bills. This Court sustained those deeds, despite the trustees' explanation that their bookkeeper had concealed the bills and despite their offer to pay the full arrearages, plus interest and penalties. This Court accorded full faith and credit to deeds resulting from adherence to statutory processes, regardless of the claimed harshness of the statutes.

4. Judgment Entered Against District of Columbia, not a Party to the Suit.

Among the peculiarities of the District Court judgment is:

"5. That the defendant (Petitioner) is entitled to have returned to it by the Collector of Taxes for the District of Columbia, when the plaintiff has redeemed the property in accordance with Title 47 Sect. 1003, D.C. Code (1950 Ed.), all taxes and assessment paid by the defendant."

Even if we assume (as did the courts below) that the conservator may mend his ways and actually pay the redemption sum to the District, what will this avail Petitioner?

The courts below presumed to order the District to pay over certain moneys, when and if it receives them. But the District was not a party to the suit.

Once the funds come into the public treasury, they cannot be paid out; except according to the provisions of law. A judgment in an action between two private parties hardly suffices.

5. Amounts to be Paid Left Open in Supposedly-Final Judgment.

Presumably all the facts necessary for its decision were before the trial court. Yet its judgment mentions no specific sum:

"3. That the plaintiff . . . redeemed the property . . . by

compliance with the requirements of Title 47 Sect. 1003 . . .

"4. That the plaintiff reimburse the defendant for any expenditure it has made for repairs or maintenance of the property, and that the defendant account to the plaintiff for any sums it has collected as rent for the property.

"5. That the defendant is entitled to have returned to it by the . . District . . . when the plaintiff has redeemed the property . . . all taxes and assessments paid by the defendant."

What do these provisions mean, in specific dollars and cents? The parties disagreed before the action was instituted. What reason is there to expect that they can now agree on anything, particularly if the courts have avoided the specific amounts.

The post-accounting is entirely without statutory basis. Even the special redemption right given to infants and persons under legal disability does not require the District or its grantee to account for its stewardship of the property during the extra-long period thus allowed. If, for example, a minor were to redeem his property after some 20 years, it is unthinkable that there would have to be an accounting by all persons who had held title under a District deed, in that period.

These phases of the decisions of the courts below, tantamount to do-it-yourself justice, hardly do credit to those benches.

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APPENDIX TO PETITION
(DC Code Sections)
(Ct of Appeals opinion)

STATUTES INVOLVED
(District of Columbia Code, 1950 Ed.)

Section 21-501—If an adult person residing in or having property in the District of Columbia is unable, by reason of advanced age, mental weakness (not amounting to unsoundness of mind) or physical incapacity properly to care for his property, the United States District Court for the District of Columbia may . . . appoint some fit person to be conservator of his property.

Section 21-503—Such conservator before entering upon the discharge of his duties shall execute an undertaking with surety to be approved by the court in such maximum amount as the court may order, conditioned on the faithful performance of his duties as such conservator; and he shall have control of the estate, real and personal, of the persons for whom he has been appointed conservator, . . . and shall in all other respects perform the same duties and have the same rights and powers with respect to the property of such person as have guardians of the estates of infants.

Section 47-1001—The assessor of the District of Columbia shall prepare a list of all taxes on real property in said District subjects to taxation on which said taxes are levied and in arrears on the first day of July of each year hereafter; and the Commissioners of said District shall fix date of sale . . . If the taxes due, together with the penalties and costs that may have accrued thereon, shall not be paid prior to the day fixed for sale, the property will be sold, under the direction of the commissioners . . . at public auction . . .

Section 47-1002—Upon the day specified . . . the Commissioners shall proceed to sell . . . any and all property upon which such taxes remain unpaid . . .

Section 47-1003— . . . the collector of taxes shall issue to the purchaser a certificate of sale, and if the property

shall not be redeemed by the owner or owners thereof within two years from the last day of sale, by payment . . . , a deed shall be given by the Commissioners of the District . . . to the purchaser at such tax sale . . . which deed shall be admitted and held to be prima facie evidence of a good and perfect title in fee simple to any property bought at said sale herein authorized; . . . in case the highest bid on any property is not sufficient to meet the taxes, penalties, and costs thereon, said property shall thereupon be bid off by the said collector of taxes, in the name of the District of Columbia; . . . and if within two years thereafter such property is not redeemed by the owner or owners thereof, or *their legal representatives*, . . . then the Commissioners . . . shall in the name of and on behalf of the District of Columbia, sell said property at public or private sale . . . And provided also, that minors and other persons under legal disability be allowed one year after attaining full age or after the removal of such legal disability to redeem the property so sold, or bid off by the collector of taxes in the name of the District of Columbia, as aforesaid, from the purchaser or purchasers, his, her, or their assigns, or from the District of Columbia, on payment of the amount of purchase money so paid therefor, with 8% per annum interest thereon as aforesaid, together with all taxes and assessments that have been paid thereon by the purchaser or his assigns between the day of the sale and the period of redemption with 8% per annum interest on the amount of such taxes and assessments . . .

Section 47-1005—The owner of any property sold as aforesaid, or any other person having an interest therein at the time of redemption, may redeem the same from such sale at any time within two years after the last day of sale by paying to the collector of taxes, for the use of the purchaser, his heirs and assigns, the sum mentioned in the certificate of sale therefor, exclusive of surplus, with interest thereon at the rate of 12% per annum after the date of such certificate of sale.

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 16329

SHENANDOAH CORPORATION, APPELLANT

v.

E. FRANKLIN JACKSON, APPELLEE

Appeal from the United States District Court for the District of Columbia

Decided January 11, 1962

Mr. Nathan L. Silberberg for appellant.

Mr. George A. Parker, with whom *Mr. Barrington D. Parker* was on the brief, for appellee.

Before EDGERTON, BAZELON and BASTIAN, *Circuit Judges*.

PER CURIAM: The will of Mary Mason Jones, probated April 7, 1955, devised and bequeathed the entire residue of her estate, real and personal, to her husband Rev. William R. Jones. On August 22, 1955, appellee was appointed conservator of the estate of Mr. Jones, whose guardian *ad litem* had informed the court that Mr. Jones was incapable of handling his own affairs. D.C. Code 21-501 (1951, Supp. VIII).

On March 12, 1959, the Commissioners of the District of Columbia conveyed to appellant Shenandoah Corporation, pursuant to a tax sale, a lot at 1129 24th Street, N.W., in Washington, D.C., which had come to Mr. Jones under the residuary clause of his wife's will. On January 27, 1960, the District Court authorized and directed appellee to sue appellant for redemption of this property. D.C. Code 21-563 (1951, Supp. VIII). Appellee filed this suit three days later.

This appeal is from a judgment for appellee, the plaintiff in the redemption suit. We find no error.

Persons under a legal disability have one year after its removal to redeem property from a tax sale. D.C.Code 47-1003 (1951). As the District Court said, "Neither the conservator nor his ward must wait for the removal of the legal disability to redeem the property. Section 47-1003 does not set a time certain for redemption, but it does set out the limits of the period of redemption. To refuse the conservator a right to redeem in a proper case because he is a conservator would defeat the very purpose of his existence."

Affirmed.